




UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

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Sunset Review
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March 11, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Issues and Decision Memorandum for the Final Results of the
Expedited Sunset Review of the Countervailing Duty Order on
Circular Welded Carbon Quality Steel Line Pipe from the People's
Republic of China

SUMMARY

We analyzed the responses of interested parties in the expedited sunset review of the countervailing duty ("CVD") order on circular welded carbon quality steel line pipe ("line pipe") from the People's Republic of China ("PRC"). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

History of the Order

On November 24, 2008, the Department published its *Final Determination* in the CVD investigation on line pipe from the PRC.¹ On January 23, 2009, the Department published in the *Federal Register* its *Amended Final Determination* and CVD order on line pipe from the PRC.² After correcting for ministerial errors, the Department calculated an amended subsidy rate for Huludao Seven-Star Steel Pipe Group Co., Ltd. ("Huludao Seven Star Group"), Huludao Steel Pipe Industrial Co. Ltd. ("Huludao Steel Pipe"), and Huludao Bohai Oil Pipe Industrial Co. Ltd. ("Huludao Bohai") (collectively, the "Huludao Companies") of 31.29 percent. The rate for Liaoning Northern Steel Pipe Co., Ltd. remained unchanged at 40.05 percent, and the all others

¹ See *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008) ("Final Determination").

² See *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 74 FR 4136 (January 23, 2009) ("Amended Final Determination").



rate was amended to 35.67 percent.³ The following programs were found to confer countervailable subsidies in the investigation:

1. The “Two Free, Three Half” Program
2. Provision of Land for Less Than Adequate Remuneration
3. Provision of Hot-Rolled Steel for Less Than Adequate Remuneration
4. Foreign Trade Development Fund Program – Grants
5. Foreign Trade Development Fund Program - VAT Refunds
6. Export Interest Subsidies
7. Export Loans
8. Liaoning Province Grants - Five Points One Line Program
9. Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies
10. Preferential Lending of Policy Loans to State-Owned Enterprises and the Steel Industry by State-Owned and Controlled Banks

Petitioners, United States Steel Corporation and Maverick Tube Corporation, challenged the *Amended Final Determination* before the Court of International Trade (“CIT”). On September 10, 2009, the CIT granted the Department’s request for a voluntary remand.⁴ On remand, the Department calculated a revised subsidy rate for the Huludao Companies of 33.43 percent and a revised all others rate of 36.74 percent.⁵ The CIT subsequently sustained the Final Redetermination.⁶

There have been no administrative reviews, or changed circumstances reviews, of the order pursuant to sections 751(a) and (c) of the Tariff Act of 1930, as amended (“the Act”).

Background

On December 2, 2013, the Department initiated a sunset review of the CVD order on line pipe from the PRC pursuant to section 751(c) of the Act.⁷ The Department received notices of intent to participate in the review on behalf of United States Steel Corporation (“US Steel”), Maverick Tube Corporation (“Maverick”), American Cast Iron Pipe Company (“ACIPCO”), JMC Steel Group, Stupp Corporation, Tex-Tube Company, TMK IPSCO, and Welspun Tubular LLC USA, (collectively, “the domestic industry”) within the deadline specified in 19 CFR 351.218(d)(1)(i). Each of these companies claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of the domestic like product.

³ See *id.*

⁴ See *United States Steel Corp. v. United States*, Consol. Court No. 09–00086 (Ct. Int’l Trade September 10, 2009) (order granting motion for voluntary remand).

⁵ See *United States Steel Corp. v. United States*, Consol. Court No. 09–00086, Final Redetermination Pursuant to Remand (Ct. Int’l Trade October 20, 2009) (“Final Redetermination”).

⁶ See *United States Steel Corp. v. United States*, Slip Op. 09-137, Consol. Court No. 09–00086 (Ct. Int’l Trade December 11, 2009); see also *Circular Welded Carbon Quality Steel Line Pipe from the People’s Republic of China: Notice of Amended Final Determination Pursuant to Final Court Decision*, 75 FR 16071 (March 31, 2010).

⁷ See *Initiation of Five-Year (“Sunset”) Review*, 78 FR 72061 (December 2, 2013).

The Department received adequate substantive responses collectively from the domestic industry within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The Department did not receive a substantive response from any government or respondent interested party to the proceeding. Because the Department received no response from the respondent interested parties, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited review of this CVD order,

Scope of the Order

The merchandise covered by this order is circular welded carbon quality steel pipe of a kind used for oil and gas pipelines, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, length, surface finish, end finish or stenciling.

The term “carbon quality steel” includes both carbon steel and carbon steel mixed with small amounts of alloying elements that may exceed the individual weight limits for non alloy steels imposed in the Harmonized Tariff Schedule of the United States (“HTSUS”). Specifically, the term “carbon quality” includes products in which (1) iron predominates by weight over each of the other contained elements, (2) the carbon content is 2 percent or less by weight and (3) none of the elements listed below exceeds the quantity by weight respectively indicated:

- (i) 2.00 percent of manganese,
- (ii) 2.25 percent of silicon,
- (iii) 1.00 percent of copper,
- (iv) 0.50 percent of aluminum,
- (v) 1.25 percent of chromium,
- (vi) 0.30 percent of cobalt,
- (vii) 0.40 percent of lead,
- (viii) 1.25 percent of nickel,
- (ix) 0.30 percent of tungsten,
- (x) 0.012 percent of boron,
- (xi) 0.50 percent of molybdenum,
- (xii) 0.15 percent of niobium,
- (xiii) 0.41 percent of titanium,
- (xiv) 0.15 percent of vanadium, or
- (xv) 0.15 percent of zirconium.

Welded line pipe is normally produced to specifications published by the American Petroleum Institute (“API”) (or comparable foreign specifications) including API A-25, 5LA, 5LB, and X grades from 42 and above, and/or any other proprietary grades or non-graded material. Nevertheless, all pipe meeting the physical description set forth above that is of a kind used in oil and gas pipelines, including all multiple-stenciled pipe with an API welded line pipe stencil is covered by the scope of this investigation.

Excluded from this scope are pipes of a kind used for oil and gas pipelines that are multiple-stenciled to a standard and/or structural specification and have one or more of the following characteristics: is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted surface finish; or has a threaded and/or coupled end finish. (The

term “painted” does not include coatings to inhibit rust in transit, such as varnish, but includes coatings such as polyester.)

The welded line pipe products that are the subject of the order are currently classifiable in the HTSUS under subheadings 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

DISCUSSION OF THE ISSUES

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that in making this determination the Department shall consider: 1) the net countervailable subsidy determined in the investigation and any subsequent reviews, and 2) whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect the net countervailable subsidy.

Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission (“ITC”) the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether the subsidy described is in Article 3 or Article 6.1 of the 1994 World Trade Organization Agreement on Subsidies and Countervailing Measures (“ASCM”).

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Parties’ Comments

The domestic industry argues that subsidization of line pipe from the PRC would likely continue or recur if the Department revoked the order because subsidies continued since the order was imposed. Specifically, the domestic industry argues that (1) no evidence has been presented that any change in the programs giving rise to the net countervailable subsidy determined in the investigation has occurred and is likely to affect the net countervailable subsidy rates determined in the investigation; (2) no administrative or new shipper reviews have been requested or conducted and therefore, to the extent that there have been any entries of subject merchandise since the imposition of the countervailing duty order, the subsidy programs identified in the original investigation continue; (3) imports declined dramatically after the imposition of the CVD order; (4) the Department continues to find the same programs countervailed in the underlying investigation to be in use and providing countervailable benefits to other Chinese producers of a variety of steel products; and (5) given the Department’s findings in recent CVD investigations of various steel products from China, it is likely that Chinese producers and exporters of line pipe also benefit from new, substantial countervailable subsidies in addition to those already countervailed by the Department in this proceeding.⁸ Thus, the domestic industry argues that the Department

⁸ See Domestic Industry’s Substantive Response at 8-11.

should conclude that subsidization would likely continue or recur if the CVD order on line pipe from the PRC were revoked.⁹

Department's Position

Section 752(b)(1) of the Act directs the Department in determining the likelihood of continuation or recurrence of a countervailable subsidy to consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether there has been any change in a program found to be countervailable that is likely to affect that net countervailable subsidy. According to the Statement of Administrative Action ("SAA"), the Department will consider the net countervailable subsidies in effect after the issuance of the order and whether the relevant subsidy programs have been continued, modified, or eliminated.¹⁰ The SAA adds that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.¹¹ Additionally, the presence of programs that have not been used, but also have not been terminated without residual benefits or replacement programs, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.¹² Where a subsidy program is found to exist, the Department will normally determine that revocation of the CVD order is likely to lead to continuation or recurrence of a countervailable subsidy regardless of the level of subsidization.¹³

As indicated above, the Department has not conducted any administrative reviews of the order since it went into effect, and no party submitted evidence to demonstrate that the countervailable programs have expired or been terminated. Thus, based on the facts on the record, the Department determines that there is a likelihood of recurrence of countervailable subsidies because the record in this proceeding indicates that the subsidy programs found countervailable during the investigation continue to exist and be used.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

Citing to the SAA and *Sunset Policy Bulletin*,¹⁴ the domestic industry states that the Department will normally select the rates determined in the original investigation as the subsidy rates likely to prevail if the order is revoked and claims that the Department's policy normally is to provide the rate determined in the original regardless of whether the rate was

⁹ *Id.* at 14.

¹⁰ See SAA, H. Doc. No. 316, 103d Cong., 2d Session, Vol. 1 (1994) at 888.

¹¹ *Id.*

¹² See, e.g., *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Final Results of Full Sunset Review of Countervailing Duty Order*, 75 FR 75455 (December 3, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

¹³ *Id.*

¹⁴ *Policies Regarding Conduct of Five Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

calculated using a company's own information or based on best information available or the facts available.¹⁵ Further, the domestic industry asserts that because there have been no administrative reviews of the order, the original net countervailable subsidy rates found represent the best evidence of the likely subsidy rates that would be enjoyed by Chinese producers and exporters in the absence of the order.¹⁶

Department's Position

The Department normally will provide the ITC the net countervailable subsidy that was determined in the investigation as the subsidy rate likely to prevail if the order is revoked because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.¹⁷ Section 752(b)(1)(B) of the Act provides, however, that the Department will consider whether any change in the program which gave rise to the net countervailable subsidy determination in the investigation or subsequent reviews has occurred that is likely to affect the net countervailable subsidy. Therefore, although the SAA and House Report provide that the Department normally will select a rate from the investigation, this rate may not be the most appropriate if, for example, the rate was derived (in whole or part) from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review.¹⁸

In this instance, however, the Department conducted no administrative reviews and no evidence has been provided that would warrant making a change to the net countervailable subsidy rate found for Chinese producers and exporters in the investigation. Therefore, the Department determines that the net countervailable subsidy rates found in the investigation, as amended, 33.43 percent for the Huludao Companies, 40.05 percent for Liaoning Northern Steel Pipe Co., Ltd., and 36.74 percent for all-others, are the net countervailable subsidy rates likely to prevail were the order to be revoked.

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC concerning the nature of the subsidies and whether the subsidies are subsidies as described in Article 3 or Article 6.1 of the WTO ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

¹⁵ See Domestic Industry's Substantive Response at 11-12.

¹⁶ See *id.*, at 12 and 14.

¹⁷ See SAA at 890, and House Report, H.R. Rep. No. 103-826 (1994) ("House Report") at 64.

¹⁸ See, e.g., *Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Results of Expedited Second Sunset Review*, 75 FR 62101 (October 7, 2010) and accompanying Issues and Decision Memorandum at Comment 2.

The following programs are prohibited subsidies as described in Article 3.1 of the ASCM:

1. Foreign Trade Development Fund Program – Grants

The Foreign Trade Development Fund supports projects undertaken by exporting enterprises to improve the competitiveness of their exported products, to develop an export processing base, to support the registration of trademarks in foreign countries, to support the training of foreign trade professionals, and to explore international markets.¹⁹

2. Export Interest Subsidies

The export interest subsidies are provided for under the “Provisional Administrative Measures on High-Tech Products and Equipment Manufacturing Products Export Financial Interest Assistance of Liaoning Province” (No. 671), established on December 16, 2004. This provisional measure provides assistance to companies to expand the exportation of high-tech products and equipment manufacturing products, and supports the development of enterprises located in Liaoning Province.²⁰

3. Export Loans

Certain loans provided by the state-owned commercial banks in China are contingent upon export activity.²¹

4. Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies

This program was established on July 1, 1999, pursuant to “Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation Projects” and provides that a domestically invested company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC.²²

The following programs do not fall within the meaning of Article 3 of the ASCM. However, they could be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or if they are subsidies to cover operating losses sustained by an industry or enterprise. Because there is insufficient information on the record to conclusively make this determination, the Department is providing to the ITC the following list of programs:

¹⁹ See *Final Determination* and accompanying Issues and Decision Memorandum at 20-21.

²⁰ See *id.*, at 22-23.

²¹ See *id.*, at 23-24.

²² See *id.*, at 25-26.

5. The “Two Free, Three Half” Program

Article 8 of the Foreign Enterprise Income Tax Law (“FIE”) Tax Law states that FIEs that are “productive” and scheduled to operate not less than 10 years are exempt from income tax in their first two profitable years and pay half of their applicable tax rate for the following three years.²³

6. Provision of Land for Less Than Adequate Remuneration (LTAR)

The Department determined that the provision of land-use rights to the Huludao Companies constitutes a countervailable subsidy in the form of land-use rights provided for LTAR. According to the company, local governments set the prices and were a party to the land-use rights agreements.²⁴

7. Provision of Hot-Rolled Steel for LTAR

The Department determined that the GOC provided hot-rolled steel to producers of line pipe for LTAR.²⁵

8. Foreign Trade Development Fund Program – Value Added Tax (VAT) Refunds

The VAT program, established on September 14, 2004 by the “Circular of the Ministry of Finance and State Tax Administration on Printing and Distributing the Regulations on Relevant Issues with Respect to Expansion of VAT Deduction Scope in the Northeast Areas” is administered by the Huludao State Tax Administration. Under the program, VAT tax payers that are members of the equipment manufacturing, petrochemical, metallurgical, ship building, automobile, and agricultural products industries may deduct VAT for purchases of fixed assets from the VAT for sales of finished goods.²⁶

9. Liaoning Province Grants - Five Points One Line Program

The Liaoning Provincial Government introduced the program on January 21, 2006, pursuant to the “Opinion of Liaoning Province Encouraging the Expansion of Opening-Up in Coastal Key Developing Areas.” The Liaoning Development and Reform Commission and the Liaoning Finance Bureau administer the interest subsidies provided under the program. The Huludao Beigang Industrial Park, Industry, and Commerce Authority administer fee exemptions provided under the program.²⁷

²³ See *id.*, at 12-13.

²⁴ See *id.*, at 13-18.

²⁵ See *id.*, at 18-20.

²⁶ See *id.*, at 21-22.

²⁷ See *id.*, at 24-25.

10. Preferential Lending of Policy Loans to State-Owned Enterprises and the Steel Industry by State-Owned and Controlled Banks

The Department examined the “Development Policies for the Iron and Steel Industry Plan” (Iron and Steel Policy) and found that it provides for assistance and support to members of the steel industry (including line pipe producers) for the use of domestically produced equipment. We found that the assistance includes the provision of loans.²⁸

FINAL RESULTS OF REVIEW

The Department finds that revocation of the order would be likely to lead to continuation or recurrence of countervailable subsidies at the rates listed below:

Manufacturers/Exporters	Subsidy rates
Huludao Companies	33.43% <i>ad valorem</i>
Liaoning Northern Steel Pipe Co., Ltd.	40.05% <i>ad valorem</i>
All Others	36.74% <i>ad valorem</i>

RECOMMENDATION

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this review in the *Federal Register*, and notify the ITC of our findings.

AGREE ✓

DISAGREE _____

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

11 MARCH 2014
Date

²⁸ See *id.*, at 26-27.